

RECEIVED  
IN THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF ALABAMA  
2006 FEB -1 A 10: 32

Kym Gray  
Full name and prison number  
of plaintiff(s)

v.

PAUL WHALEY  
ALABAMA DEPARTMENT  
OF CORRECTIONS ET AL  
IN HIS OWN INDIVIDUAL  
CAPACITY

Name of person(s) who violated  
your constitutional rights.  
(List the names of all the  
persons.)

CIVIL ACTION NO. 2:06cv107-MEF  
(To be supplied by Clerk of  
U.S. District Court)

**DEMAND FOR JURY TRIAL**

**I. PREVIOUS LAWSUITS**

- A. Have you begun other lawsuits in state or federal court dealing with the same or similar facts involved in this action? YES ( ) NO (X)
- B. Have you begun other lawsuits in state or federal court relating to your imprisonment? YES ( ) NO (X)
- C. If your answer to A or B is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

**1. Parties to this previous lawsuit:**

Plaintiff(s) N/A

Defendant(s) N/A

**2. Court (if federal court, name the district; if state court, name the county)**

N/A

3. Docket number N/A
4. Name of judge to whom case was assigned N/A
5. Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?) N/A
6. Approximate date of filing lawsuit N/A
7. Approximate date of disposition N/A

II. PLACE OF PRESENT CONFINEMENT 565-RIBB LANE  
BRENT, ALABAMA

PLACE OR INSTITUTION WHERE INCIDENT OCCURRED RIBB CORRECTIONAL FACILITY

III. NAME AND ADDRESS OF INDIVIDUAL(S) YOU ALLEGE VIOLATED YOUR CONSTITUTIONAL RIGHTS.

NAME	ADDRESS
1. <u>PAUL WHALEY</u>	<u>1400 LLOYD STREET</u> <u>MONTGOMERY, ALABAMA</u> <u>36130</u>
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____

IV. THE DATE UPON WHICH SAID VIOLATION OCCURRED \_\_\_\_\_

V. STATE BRIEFLY THE GROUNDS ON WHICH YOU BASE YOUR ALLEGATION THAT YOUR CONSTITUTIONAL RIGHTS ARE BEING VIOLATED:

GROUND ONE: SEE ATTACHED COPY

STATE BRIEFLY THE FACTS WHICH SUPPORT THIS GROUND. (State as best you can the time, place and manner and person involved.)

SEE ATTACHED COPY

GROUND TWO:

SUPPORTING FACTS:

SEE: ATTACHED COPY

GROUND THREE:

SUPPORTING FACTS:

SEE: ATTACHED COPY

VI. STATE BRIEFLY EXACTLY WHAT YOU WANT THE COURT TO DO FOR YOU.  
MAKE NO LEGAL ARGUMENT. CITE NO CASES OR STATUTES.

SEE : ATTACHED COPY

Kym Gray  
Signature of plaintiff(s)

I declare under penalty of perjury that the foregoing is true  
and correct.

EXECUTED on JANUARY 5<sup>th</sup> 2006.  
(Date)

Kym Gray  
Signature of plaintiff(s)

IN THE UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF ALABAMA

RECEIVED

Kym Gray #203553  
PLAINTIFF

2006 FEB -1 A 10:32

CLERK OF DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA

JURY Demand REQUESTED

- V.S. -

PAUL WHALEY  
ALABAMA DEPARTMENT OF CORRECTIONS  
CLASSIFICATION-DIVISION  
IN HIS OWN INDIVIDUAL CAPACITY  
DEFENDANT

CIVIL ACTION number :  
2:06cv107-MEF  
TO BE SUPPLIED BY CLERK

CIVIL COMPLAINT  
LIBEL -- SLANDER -- DEFAMATION

NOW COMES THE PLAINTIFF Kym Gray IN PROPER PERSONA AND DOES RESPECTFULLY SUBMITS THIS COMPLAINT PURSUANT TO THE FEDERAL RULES CIVIL PROCEDURES 42 U.S.C. 1983 SPECIFICALLY RULE #3 AND #4. AND AS CAUSE THEREOF PLAINTIFF GRAY, WOULD SHOW THIS HONORABLE COURT THE FOLLOWING :

HISTORY OF THE CASE FACTS AND ISSUES  
PRESENTED FOR JUDICIAL REVIEW

1. THE PLAINTIFF HEREIN [GRAY] STATES THAT HE IS AN INMATE CURRENTLY BEING CONFINED IN AN ALABAMA STATE PENITENTIARY, SERVING A SENTENCE OF [50] FIFTY-YEARS AFTER HAVING BEEN CONVICTED OF THE OFFENSE OF MURDER.

[1].

IN VIOLATION OF SECTION 13A-6-2 CODE OF ALABAMA 1975.

2. PLAINTIFF GRAY, SAYS THAT THE DEFENDANT PAUL WHALEY IS AN EMPLOYEE OF THE STATE OF ALABAMA TO-WIT: ALABAMA DEPARTMENT OF CORRECTIONS ASSIGNED AS DIRECTOR OF A.D.O.C. CLASSIFICATION-DIVISION OVERSIGHT PLACEMENT AND CUSTODY OF THE INMATE POPULATION.
3. PLAINTIFF GRAY, DOES FURTHER STATES THAT DEFENDANT WHALEY, HAS GIVEN A SWORN AFFIDAVIT/STATEMENT THAT WAS ENTERED IN CASE NUMBER CU-04-457 MONTGOMERY COUNTY, ALABAMA SEE: ATTACHED EXHIBIT #A, IN WHICH DEFENDANT WHALEY HAS SLANDER THE NAME OF PLAINTIFF GRAY, AND HAS FURTHER GIVEN A DEFAMATION STATEMENT IN HIS SWORN AFFIDAVIT TO REFUTE THE ISSUE AND FACTS BEFORE THE CIRCUIT COURT OF MONTGOMERY COUNTY, IN THIS THE PLAINTIFF'S CASE-IN-CHIEF TO-WIT: MOTION FOR CLARIFICATION OF THIS THE PLAINTIFF'S RECORD THAT THE DEFENDANT WHALEY IS USING TO DENY THE PLAINTIFF'S ACHIEVEMENT OF LESSER-RESTRICTED INSTITUTIONAL PLACEMENT AND REMOVAL OF ERRONEOUS INFORMATION FROM THE PLAINTIFF'S FILES.

PLAINTIFF GRAY, SAYS THAT DEFENDANT WHALEY DEFAMATORY-STATEMENT IN HIS SWORN AFFIDAVIT WAS IN THE FORM OF SLANDER UNTO THIS YOUR PLAINTIFF, AND SUCH THE STATEMENT WAS VERY UNPROFESSIONAL.

C 22.  
L 3 3.

OF DEFENDANT WHALEY IN INDICATING THAT THIS  
 THE PLAINTIFF IS A "VIOLENT CRIMINAL PREDATOR"  
 AND THE PLAINTIFF SAYS THAT SUCH THE TERMS  
 OF WORDS OF DEFENDANT WHALEY THAT WAS EXPRESSED  
 ARE OF SUCH MATITUDE THAT DEFENDANT WHALEY  
 DEFINITIONS OF PLAINTIFF GRAY IS OF SOME ANIMAL  
 THAT PREYS, DESTROYS OR DEVOURS, AND THE  
 PRIMARY MODE OF THE ANIMAL DESCRIBED BY  
 DEFENDANT WHALEY ONLY "KILLS AND CONSUME,  
 AND PLAINTIFF GRAY SAYS THAT THIS STATEMENT AND  
 AFFIDAVIT OF DEFENDANT WHALEY IS IN DIRECT  
 VIOLATION OF SECTION 6-2-3 ARTICLE 14  
FED. R. CIV. PROC. TO-WIT ACCURAL OF CLAIM ---  
FRAUD.

PLAINTIFF GRAY, STATES THAT THE FALSEHOOD OF THE  
 DEFAMATION-STATEMENT OF DEFENDANT WHALEY WAS  
 MADE WITH SUCH KNOWLEDGE OF ITS FALSITY  
 AND WITH RECKLESS DISREGARD OF PLAINTIFF GRAY,  
 IN HIS VAINLESS EFFORTS TO HAVE THE RECORD  
 OF HIS CONVICTION/REPORT CORRECTED BY THE  
 DEFENDANT PAUL WHALEY TO-WIT: ALABAMA -  
 DEPARTMENT OF CORRECTIONS --- CLASSIFICATION-DIVISION.  
 PLAINTIFF GRAY, DOES ASSERTS THAT DEFENDANT WHALEY,  
 DOES HAVE STRICT LIABILITY FOR HIS STATEMENT,  
ACTIONS, AND CONDUCT. PLAINTIFF GRAY, STATES THAT  
 A-LINE MUST BE DRAWN BETWEEN SPEECH  
 UNCONDITIONALLY GUARANTEED AND SPEECH WHICH  
 MAY BE LEGITIMATELY REGULATED.

PLAINTIFF GRAY, SAYS THAT THE UNITED STATES SUPREME COURT HAS EXAMINED FOR ITSELF SUCH STATEMENTS IN THE ISSUES AND THE CIRCUMSTANCES, UNDER WHICH THE STATEMENT WAS MADE TO SEE WHETHER THE STATEMENT ARE OF A CHARACTER THAT'S PROTECTED BY THE CONSTITUTIONAL GUARANTY OF FREEDOM OF SPEECH.

PLAINTIFF GRAY, DOES FURTHER ASSERTS THAT THIS COURT MUST MAKE AN INDEPENDANT EXAMINATION OF THE WHOLE RECORD OF THIS INSTANT CAUSE BEFORE THIS COURT AS TO ASSURE ITSELF THAT THE SWORN AFFIDAVIT/STATEMENT AS SUBMITTED BY DEFENDANT WHALEY DID NOT CONSTITUTE A - FORBIDDEN INTRUSION ON THE FIELD OF FREE EXPRESSION SEE: APPEAL AND ERROR 751  
SEE: K-MART CORPORATION INC. U. PENDERGRASS  
494 SO 2D 600 [CALA. 1986]

PLAINTIFF GRAY, FURTHER SAYS THAT IN ORDER TO MAINTAIN AN ACTION FOR THE DEFAMATORY - AFFIDAVIT/STATEMENT OF DEFENDANT WHALEY, THIS YOUR PLAINTIFF [GRAY] MUST PROVE THAT THERE EXIST DOCUMENTATION THAT WAS IN THE FORM OF PUBLICATION THAT WAS MADE TO ONE OR MORE OTHER PARTIES SEE: EXHIBIT #A  
CITING: WILLIS U. DEMOPOLIS NURSING HOME  
336 SO 2D 1117-1129 [CALA. 1976].



CITING : MCDANIELS V. CRESCENT MOTORS INC.  
 249 ALA. 330-332 31 SO 2d,  
 343-344 [1947].

PLAINTIFF GRAY, SAYS THAT SUCH THE WORDS OF DEFENDANT WHALEY IM PUTTING THE GUILT, OR COMMISSION OF SOME CRIMINAL OFFENSE INVOLVING MORAL TURPITUDE AND/OR INFAMOUS PUNISHMENT TO-WIT: "THAT PLAINTIFF GRAY, VIOLENT SEXUAL ASSAULTS OCCURRED BEFORE HE [GRAY] MURDERED SAIDED VICTIM ] SEE: EXHIBIT # A .

PLAINTIFF GRAY DOES ASSERTS THAT DEFENDANT WHALEY HAS REFERRED TO THIS THE PLAINTIFF AS AN ANIMAL AS VILENCKS OR WICKEDNESS OF ANY PRINCIPLES AN BASENESS IN THE HUMAN-HEART, AND THE STATEMENT/AFFIDAVIT OF DEFENDANT WHALEY IS BLATANTLY CALLING THIS YOUR PLAINTIFF "A-VIOLENT CRIMINAL PREDATOR", PLAINTIFF GRAY, SAYS THAT THERE IS NO QUESTION THAT THE LANGUAGE OF DEFENDANT WHALEY DOES FALL IN THE CATEGORY OF SLANDER PER-SE.

PLAINTIFF GRAY, STATES THAT THERE NEED NOT BE AN ACTUAL PHYSICAL INJURY FOR THIS THE PLAINTIFF GRAY TO RECOVER DAMAGES IN THIS CAUSE, FOR THE WILFUL AND WANTON ACTS OF DEFENDANT WHALEY FOR THE IMPOSITION OF EMOTIONAL DISTRESS AND MENTAL INJURIES.  
 [5].

THAT DEFENDANT WHALLEY HAS FALSELY ACCUSED PLAINTIFF GRAY OF AN OFFENSE AND/OR CRIME THAT THE PLAINTIFF WAS NOT CHARGED OR CONVICTED OF IN THE OFFENSE OF THIS MATTER.

PLAINTIFF GRAY STATES THAT THERE IS AMBIGUITY IN DEFENDANT WHALLEY STATEMENT, AND PLAINTIFF GRAY, SAYS THAT DEFENDANT WHALLEY HAS ACTED WITH ACTUAL MALICE AND IN THIS THE PLAINTIFF'S CLAIMS OF ACTUAL MALICE WHICH PLAINTIFF GRAY MEANS THAT DEFENDANT WHALLEY MADE THE STATEMENT KNOWING THEM TO BE FALSE AND/OR UNTRUE AND IN RECKLESS-DISREGARD OF THE TRUTH.

PLAINTIFF GRAY, SAYS THAT DEFENDANT WHALLEY HAS INTENTIONALLY INFLECTED EMOTIONAL DISTRESS AND THE SEVERITY OF THE DEFAMATION STATEMENT OF DEFENDANT WHALLEY WAS "OUTRAGEOUS" IN CHARACTER AND SO EXTREME IN DEGREE AS SAIDED STATEMENT GOES BEYOND ALL POSSIBLE BOUNDS OF DECENCY, AND THE STATEMENT/AFFIDAVIT OF DEFENDANT WHALLEY CAN ONLY BE REGARDED AS "ATROCIOUS AND UTTERLY INTOLERABLE IN A CIVILIZED COMMUNITY."

PLAINTIFF GRAY ASSERTS THAT THE USUAL ANALYTICAL DIVISION IS INTO TWIN TORTS OF LIBEL FOR THE WRITTEN DEFAMATION AND SLANDER FOR ORAL ONE. [6].

SEE : PROSSER & KEETON ON LAW OF TORTS  
III AT 771 5<sup>TH</sup> ED. 1984.

SEE : LIBEL AND SLANDER 7 (1) which  
PROVIDES IN PARTS :

ONLY WHEN THE CRIME FALSELY  
IMPUTED IS OF MAJOR AND SERIOUS  
CHARACTER IS IT ACTIONABLE AS DEFAMATION  
WITHOUT PROOF OF SPECIAL DAMAGES  
RESTATEMENT SECOND OF TORTS 571 COMMENT.]

SEE : DEFAMATION AND SLANDER 6 (1)  
which PROVIDES IN PARTS :

"DEFAMATION IS THAT WHICH TENDS  
TO INJURE REPUTATION IN THE  
POPULAR SENSE TO DIMINISH THE  
ESTEEM, RESPECT, GOODWILL, OR  
CONFIDENCE."

PLAINTIFF GRAY, STATES THAT IN THE INSTANT  
CAUSE THAT'S BEFORE THIS HONORABLE COURT  
IS THAT THE DEFENDANT HEREIN [WHALEY]  
ATTEMPTS TO EXCITE ADVERSE AND/OR  
DEROGATORY THIS THE PLAINTIFF GRAY  
WITH "UNPLEASANT FEELINGS SLEEPLESS  
ANGER, AND PROFOUND IRRITATION."  
[7].

PLAINTIFF GRAY HAS THE REQUIRED PROOF AND DOCUMENTS WITH THE NECESSARY INFORMATION TO ASSESS THE RELIABILITY OF D.N.A. TESTING PERFORMED BY THE ALABAMA DEPARTMENT OF FORENSIC SCIENCE AUTOPSY REPORT - - - WHERE A SEXUAL - ASSAULT - KIT WAS PERFORMED AND THERE WAS NO EVIDENCE OF ANY INJURY [SEXUAL] UNTO THE VICTIM OF THIS MATTER.

"THEREFORE FOR GOOD CAUSE AS SHOWN"

1. THAT THIS HONORABLE COURT WILL ENTER ITS ORDER GRANTING PLAINTIFF A HEARING ON THE DISPUTED ISSUES AND FACTS PRESENTED IN THE PLAINTIFF'S COMPLAINT.
2. THAT THIS HONORABLE COURT WILL FURTHER ENTER ITS ORDER COMMANDING DEFENDANT PAUL WHALEY AS THE DIRECTOR OF THE ALABAMA DEPARTMENT OF CORRECTIONS TO REMOVE AND/OR EXPUNGE FROM THE FILES OF THE A.D.A.C. THE FALSE INFORMATION AND/OR DATA OF PLAINTIFF KYM GRAY.
3. THAT THIS HONORABLE COURT WILL GRANT JUDGMENT UNTO PLAINTIFF GRAY, AWARDED THE PLAINTIFF \$400,000 FOUR-HUNDRED-THOUSAND-DOLLARS IN ACTUAL AND PUNITIVE £87.

DAMAGES FOR EMOTIONAL AND MENTAL DISTRESS.

4. THAT THIS HONORABLE COURT WILL GRANT UNTO PLAINTIFF GRAY ANY OTHER AND DIFFERENT RELIEF TO WHICH THE PLAINTIFF MIGHT OTHERWISE BE ENTITLED.

### CONCLUSION

WHEREFORE PREMISES AND FACTS TO BE CONSIDERED PLAINTIFF GRAY DOES PRAY THAT THIS COURT WILL ENTER ITS JUDGMENT AWARDING PLAINTIFF GRAY, THE RELIEF REQUESTED HEREIN \$400,000 FOUR-HUNDRED-THOUSAND-DOLLARS IN ACTUAL AND PUNITIVE DAMAGES FOR THE EMOTIONAL AND MENTAL DISTRESS CAUSED BY DEFENDANT WHALEY.

### CERTIFICATE OF SERVICE VERIFICATION

THIS DOES HEREBY CERTIFY'S THAT KYM GRAY HAS FORWARDED UNTO THE OFFICE OF DEBRA P. HACKETT CLERK, MIDDLE DISTRICT OF ALABAMA AND UPON THE OFFICE OF PAUL WHALEY, DIRECTOR ALABAMA DEPARTMENT OF CORRECTIONS CLASSIFICATION DIVISION A COPY OF THE FOREGOING PLEADINGS BY PLACING SAME IN THE UNITED STATES POSTAL-MAIL.

SWORN TO AND SUBSCRIBED BEFORE ME  
This 18<sup>th</sup> DAY OF January, 2006

NOTARY PUBLIC : Lefcia Cleveland Ford

MY COMMISSION EXPIRES : 06-23-2009

RESPECTFULLY SUBMITTED :

Kym Gray

KYM GRAY

A.I.S. # 203553

565- BIRB LANE

BRENT, ALABAMA

35034

CC : DEBRA P. HACKETT --- CLERK

PAUL WHALEY --- DIRECTOR A.D.O.C.

CC : PERSONAL FILES

(10).